

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA :

v. :

JAMES EDWIN RICE : 1:20CR 458 -1
SUSAN EILEEN RICE : 1:20CR 458 -2

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS

At various times material to this Indictment:

Parties and Entities

1. Defendants JAMES EDWIN RICE and SUSAN EILEEN RICE were a married couple who resided in Moore County, within the Middle District of North Carolina.

2. JAMES EDWIN RICE was an orthopedic surgeon who solely owned and operated an orthopedic practice located within the Middle District of North Carolina from approximately 1992 through the present. The practice changed names over time: first it was named Sandhills Orthopaedic and Spine Clinic, PA; then Sandhills Orthopaedic and Spine Holdings, PLLC; and finally Orthopaedic Care, LLC. JAMES EDWIN RICE used the same office space and employees for all three entities. Collectively, these entities will be referred to as "Sandhills Orthopaedic" unless a distinction is required.

3. SUSAN EILEEN RICE worked at Sandhills Orthopaedic and had authority over its administrative operations, including its payroll and federal employment tax obligations and its books and records.

4. From in or about January 1994 through in or about February 2014, JAMES EDWIN RICE and SUSAN EILEEN RICE formed several entities in addition to Sandhills Orthopaedic, including:

a. SUSAN EILEEN RICE owned and operated a truffle business, which she conducted through the following entities, among others: Black Diamond French Truffles, Inc.; Susan Alexander Truffles, LLC; Black Diamond French Truffles Holdings, LLC; and Susan Rice Truffle Products, LLC. Relatedly, JAMES EDWIN RICE and SUSAN EILEEN RICE held 237 acres of farmland in an entity named Forest Haven, LLC, which leased the land to the truffle business.

b. JAMES EDWIN RICE and SUSAN EILEEN RICE created NICOR, LLC, which they used to hold their real estate assets, among other purposes.

c. JAMES EDWIN RICE and SUSAN EILEEN RICE created Financial Solutions Management, Inc., which they used to distribute payroll for Sandhills Orthopaedic and the truffle business, among other purposes.

d. JAMES EDWIN RICE and SUSAN EILEEN RICE created other entities, including Diamond Forestland, LLC.

5. The Internal Revenue Service (“IRS”) was an agency of the United States Department of Treasury responsible for administering the federal tax laws of the United States.

History of Non-Compliance with Sandhills Orthopaedic's Employment Tax Responsibilities

6. The Federal Insurance Contribution Act (“FICA”) required employers to withhold Medicare and Social Security taxes from their employees’ wages. The Internal Revenue Code also required employers to withhold federal income taxes from their employees’ wages. Employers held these taxes in trust for the United States and were required to pay them over to the IRS on behalf of their employees. Collectively, these withheld taxes will be referred to as “trust fund taxes.”

7. Every employer must have had at least one person with the obligation to collect, account for, and pay over withheld trust fund taxes to the government. JAMES EDWIN RICE and SUSAN EILEEN RICE were both responsible for withholding trust fund taxes from Sandhills Orthopaedic’s employees’ wages and paying over the trust fund taxes to the IRS.

8. In addition to trust fund taxes, the Internal Revenue Code also required employers to pay an employer's share of their employees' FICA taxes to the IRS. Collectively, the combined employees' trust fund taxes and employer's share of FICA taxes will be referred to as "employment taxes."

9. Employers were required to report their employment taxes due to the IRS on a quarterly basis on Forms 941 (Employer's Quarterly Federal Tax Return), which they signed under penalties of perjury.

10. JAMES EDWIN RICE and SUSAN EILEEN RICE withheld trust fund taxes from Sandhills Orthopaedic's employees' wages from at least January 2007 through at least December 2014 but failed to pay these withheld taxes over to the IRS, with the exception of two employment tax quarters. JAMES EDWIN RICE and SUSAN EILEEN RICE also failed to file timely Forms 941 for most employment tax quarters during this time.

11. JAMES EDWIN RICE and SUSAN EILEEN RICE caused Forms W-2 to be created for Sandhills Orthopaedic's employees which falsely implied that trust fund taxes were paid to the United States.

12. In or about 2009, a Sandhills Orthopaedic employee informed JAMES EDWIN RICE that she had discovered that her Form W-2 information had not been reported to the Social Security Administration.

13. From in or about June 2012, through in or about October 2015, the North Carolina Department of Revenue sent Sandhills Orthopaedic at least 15 notices that it had not filed state employment tax returns and owed state trust fund taxes.

14. In or about June 2015, an IRS revenue officer began corresponding with Sandhills Orthopaedic and Spine Clinic, PA, informing the business that it was required to file its outstanding Forms 941. However, JAMES EDWIN RICE and SUSAN EILEEN RICE failed to do so. In response, the IRS assessed employment taxes against Sandhills Orthopaedic and Spine Clinic, PA, for January 2007 through December 2011, and June 2013 through December 2014.

15. In or about October 2016, JAMES EDWIN RICE signed, and caused to be submitted to the IRS, Forms 941 for Sandhills Orthopaedic reporting employment tax due and owing for each tax quarter from the quarter ending March 31, 2007, through the quarter ending December 31, 2011, and from the quarter ending September 30, 2012, through the quarter ending December 31, 2014. In total, the Forms 941 reported Sandhills Orthopaedic

owed trust fund taxes of approximately \$588,243.27 and an employer's share of FICA taxes of approximately \$239,038.17 (approximately \$827,281.44 in total employment taxes).

16. After filing the Forms 941 identified in Paragraph 15, JAMES EDWIN RICE and SUSAN EILEEN RICE did not pay any employment taxes for those quarters.

17. On or about January 6, 2017, JAMES EDWIN RICE signed under the penalties of perjury and caused to be submitted to an IRS revenue officer a Form 433-B (Collection Information Statement for Business) that was false and misleading in that it was incomplete concerning bank accounts and assets.

Concealment of Sandhills Orthopaedic's Funds and
Non-Compliance with Individual Income Tax Responsibilities

18. Sandhills Orthopaedic earned gross receipts of at least \$2 million each year from at least 2013 through at least 2016. Despite receiving at least \$8 million during this period, JAMES EDWIN RICE and SUSAN EILEEN RICE filed no tax returns personally or on behalf of their business since the 2012 tax year. In addition, JAMES EDWIN RICE and SUSAN EILEEN RICE did not file tax returns for the entities described in Paragraph 4.

19. Instead of reporting the income to the IRS and paying taxes due and owing, JAMES EDWIN RICE and SUSAN EILEEN RICE transferred, and caused to be transferred, the money from Sandhills Orthopaedic's bank accounts into the bank accounts in the names of the entities listed in Paragraph 4, which they used to conceal their income. They used these funds for their own purposes, including to fund other business ventures, such as SUSAN EILEEN RICE's truffle farm. They also used the funds for personal expenditures not related to Sandhills Orthopaedic, including, among other expenditures: paying rent for their personal residence; paying fees for boarding their dog at a kennel; payments to SUSAN EILEEN RICE's spiritual advisor; and payments for their country club membership.

20. JAMES EDWIN RICE and SUSAN EILEEN RICE also transferred, and caused to be transferred, funds from Sandhills Orthopaedic's bank accounts into their personal bank accounts.

21. From at least June 2013 through at least December 2016, JAMES EDWIN RICE and SUSAN EILEEN RICE diverted, and caused to be diverted, cash and check co-payments from Sandhills Orthopaedic's patients directly into their personal bank accounts totaling at least \$1 million.

22.

23. Despite taking substantial funds from Sandhills Orthopaedic, JAMES EDWIN RICE and SUSAN EILEEN RICE failed to file individual income tax returns for at least the tax years 2006 through 2011 and 2013 through at least 2018, or voluntarily pay individual income taxes for at least the tax years 2007 through 2011 and 2013 through at least 2018.

24. The IRS notified JAMES EDWIN RICE and SUSAN EILEEN RICE since at least April 2008 that they had not filed individual income tax returns by the following actions, among others:

a. In or about April 2008, the IRS issued a due process notice to JAMES EDWIN RICE and SUSAN EILEEN RICE for failing to pay their 2005 individual income tax.

b. In or about December 2008, the IRS assessed a tax due and owing against JAMES EDWIN RICE and SUSAN EILEEN RICE for failing to pay their 2006 individual income tax.

c. In or about November 2009, the IRS issued a levy against JAMES EDWIN RICE and SUSAN EILEEN RICE for their unpaid 2006 individual income tax.

d. In or about December 2009, the IRS issued a notice of federal tax lien to JAMES EDWIN RICE and SUSAN EILEEN RICE for their unpaid 2006 individual income tax.

e. In or about July 2011, the IRS issued a levy against JAMES EDWIN RICE and SUSAN EILEEN RICE for their unpaid 2006 individual income tax.

f. In or about May 2015, the IRS issued a due process notice to JAMES EDWIN RICE and SUSAN EILEEN RICE for failing to pay a balance due on their 2012 individual income tax.

g. In or about October 2015, the IRS issued a levy against JAMES EDWIN RICE and SUSAN EILEEN RICE for their unpaid 2006 individual income tax.

h. In or about October 2016, the IRS issued a lien on Forest Haven, LLC, as an alter-ego of JAMES EDWIN RICE and SUSAN EILEEN RICE for failing to pay their 2006 individual income tax.

COUNT ONE
(Conspiracy to Defraud the United States)

1. Paragraph 1 through 24 of the Introductory Allegations section of this Indictment are hereby incorporated by reference as if fully set forth herein.
2. Beginning no later than January 2007, continuing through at least December 2016, in the County of Moore, in the Middle District of North Carolina, and elsewhere, JAMES EDWIN RICE and SUSAN EILEEN RICE did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together, with each other and with others known and unknown to the Grand Jury, to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in the ascertainment, computation, assessment, and collection of revenue, to wit: employment taxes and individual income taxes.

Objects of the Conspiracy

3. It was an object of the conspiracy for JAMES EDWIN RICE and SUSAN EILEEN RICE to withhold trust fund taxes from Sandhills Orthopaedic's employees' wages and use those withheld trust fund taxes for their personal benefit instead of paying the trust fund taxes over to the IRS.

4. It was a further object of the conspiracy for JAMES EDWIN RICE and SUSAN EILEEN RICE to obstruct the IRS from collecting these withheld trust fund taxes.

5. It was a further object of the conspiracy for JAMES EDWIN RICE and SUSAN EILEEN RICE to not pay any taxes on their business and personal income and to conceal the income earned by their businesses from the IRS.

6. It was a further object of the conspiracy for JAMES EDWIN RICE and SUSAN EILEEN RICE to financially enrich themselves.

Manner and Means

7. It was part of the conspiracy that JAMES EDWIN RICE and SUSAN EILEEN RICE withheld, and caused to be withheld, trust fund taxes from Sandhills Orthopaedic's employees' wages and did not pay those funds over to the IRS.

8. It was further part of the conspiracy that JAMES EDWIN RICE and SUSAN EILEEN RICE used those withheld trust fund taxes to pay other expenses.

9. It was further part of the conspiracy that JAMES EDWIN RICE and SUSAN EILEEN RICE used the income earned from Sandhills Orthopaedic to fund personal expenditures, including SUSAN EILEEN RICE's truffle farm.

10. It was further part of the conspiracy that JAMES EDWIN RICE and SUSAN EILEEN RICE created bank accounts and entities that they used to conceal taxable income from the IRS.

11. It was further part of the conspiracy that JAMES EDWIN RICE and SUSAN EILEEN RICE kept incomplete business records that did not report income that they earned from Sandhills Orthopaedic.

Overt Acts

12. In furtherance of the conspiracy, and to effect the objects thereof, JAMES EDWIN RICE and SUSAN EILEEN RICE committed, or caused to be committed, overt acts within the Middle District of North Carolina, and elsewhere, including, but not limited to, the following:

a. During the following employment tax quarters, JAMES EDWIN RICE and SUSAN EILEEN RICE withheld from Sandhills Orthopaedic's employees' wages trust fund taxes in the approximate amounts listed below, but failed to pay those trust fund taxes to the IRS:

Overt Act	Quarter (Ending Date)	Trust Fund Taxes Withheld and Not Paid to the IRS
i.	March 31, 2007	\$14,791.75
ii.	June 30, 2007	\$20,977.57
iii.	September 30, 2007	\$21,624.99
iv.	December 31, 2007	\$23,170.94
v.	March 31, 2008	\$15,550.64
vi.	June 30, 2008	\$17,800.35
vii.	September 30, 2008	\$19,370.05

Overt Act	Quarter (Ending Date)	Trust Fund Taxes Withheld and Not Paid to the IRS
viii.	December 31, 2008	\$20,036.21
ix.	March 31, 2009	\$19,404.85
x.	June 30, 2009	\$17,771.02
xi.	September 30, 2009	\$18,026.78
xii.	December 31, 2009	\$20,001.84
xiii.	March 31, 2010	\$22,367.85
xiv.	June 30, 2010	\$23,321.02
xv.	September 30, 2010	\$24,307.52
xvi.	December 31, 2010	\$23,815.09
xvii.	March 31, 2011	\$24,580.09
xviii.	June 30, 2011	\$26,356.37
xix.	September 30, 2011	\$25,208.20
xx.	December 31, 2011	\$19,721.89
xxi.	September 30, 2012	\$17,165.85
xxii.	December 31, 2012	\$18,327.63
xxiii.	March 31, 2013	\$17,749.90
xxiv.	June 30, 2013	\$16,048.10
xxv.	September 30, 2013	\$17,138.11
xxvi.	December 31, 2013	\$17,580.31
xxvii.	March 31, 2014	\$18,141.54
xxviii.	June 30, 2014	\$16,484.17
xxix.	September 30, 2014	\$17,065.09
xxx.	December 31, 2014	\$14,337.55

b. JAMES EDWIN RICE and SUSAN EILEEN RICE made, and caused to be made, personal expenditures from bank accounts that they controlled and that were sourced from funds from Sandhills Orthopaedic, including the following payments for personal expenditures, among others:

Overt Act	Approximate Date	Payor Account	Personal Expenditure	Amount
i.	09/17/13	BB&T x6615 NICOR, LLC	Rent for SUSAN EILEEN RICE's Apartment	\$1,755

Overt Act	Approximate Date	Payor Account	Personal Expenditure	Amount
ii.	02/10/14	BB&T x6615 NICOR, LLC	Rent for SUSAN EILEEN RICE's Apartment	\$1,705
iii.	05/02/14	BB&T x6648 Financial Solutions Management, Inc.	Payment for Dog Boarding at Kennel	\$1,123
iv.	05/23/14	BB&T x6648 Financial Solutions Management, Inc.	Country Club Payment	\$5,000
v.	07/05/15	Wells Fargo x6876 Susan Rice Truffle Products, LLC	Rent for SUSAN EILEEN RICE's Apartment	\$1,370
vi.	07/13/15	BB&T x6615 NICOR, LLC	Payment for Dog Boarding at Kennel	\$1,849
vii.	12/11/15	BB&T x6648 Financial Solutions Management, Inc.	Country Club Payment	\$3,163
viii.	06/09/16	BB&T x6648 Financial Solutions Management, Inc.	Country Club Payment	\$2,257
ix.	08/09/16	BB&T x6648 Financial Solutions Management, Inc.	Country Club Payment	\$2,625
x.	09/29/16	BB&T x6648 Financial Solutions Management, Inc.	Payment to SUSAN EILEEN RICE's Spiritual Advisor	\$669
xi.	02/15/17	BB&T x6761 Diamond Forestland, LLC	Country Club Payment	\$2,500
xii.	03/24/17	BB&T x6761 Diamond Forestland, LLC	Country Club Payment	\$1,400

c. JAMES EDWIN RICE and SUSAN EILEEN RICE made, and caused to be made, personal expenditures from Sandhills Orthopaedic's bank accounts, including the following payments, among others:

Overt Act	Approximate Date	Personal Expense	Amount
i.	05/29/13	Rent for JAMES EDWIN RICE's Personal Residence	\$5,000
ii.	08/07/13	Payment for Dog Boarding at Kennel	\$1,826
iii.	12/06/13	Payment to SUSAN EILEEN RICE's Spiritual Advisor	\$1,375
iv.	02/27/14	Rent for JAMES EDWIN RICE's Personal Residence	\$5,280
v.	07/25/14	Payment to SUSAN EILEEN RICE's Spiritual Advisor	\$1,375
vi.	08/15/14	Payment for Dog Boarding at Kennel	\$1,688
vii.	02/17/15	Payment to SUSAN EILEEN RICE's Spiritual Advisor	\$1,375
viii.	03/09/15	Payment to SUSAN EILEEN RICE's Spiritual Advisor	\$1,375
ix.	09/11/15	Country Club Payment	\$1,628
x.	02/10/16	Payment to SUSAN EILEEN RICE's Spiritual Advisor	\$1,375
xi.	09/01/16	Rent for JAMES EDWIN RICE's Personal Residence	\$7,500
xii.	11/30/16	Country Club Payment	\$1,700
xiii.	02/14/17	Rent for JAMES EDWIN RICE's Personal Residence	\$2,500
xiv.	09/22/17	Country Club Payment	\$1,200
xv.	10/02/17	Country Club Payment	\$1,453
xvi.	05/08/18	Country Club Payment	\$1,500
xvii.	05/21/18	Country Club Payment	\$1,500
xviii.	07/23/18	Country Club Payment	\$2,000

d. From in or about June 2013 through in or about December 2016, JAMES EDWIN RICE deposited, and caused to be deposited, into his

personal bank account at First Bank (x0011) checks for copayments from patients of Sandhills Orthopaedic totaling approximately \$320,000.

e. From in or about June 2013 through in or about December 2016, SUSAN EILEEN RICE deposited, and caused to be deposited, into her personal bank account at First Bank (x3450) cash copayments for copayments from patients of Sandhills Orthopaedic totaling approximately \$688,000.

f. From at least January 2012 through at least December 2015, JAMES EDWIN RICE and SUSAN EILEEN RICE maintained, and caused to be maintained incomplete corporate records for Sandhills Orthopaedic that did not reflect any payments to them.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
(Evasion of Payment of Employment Taxes)

1. Paragraph 1 through 24 of the Introductory Allegations section of this Indictment are hereby incorporated by reference as if fully set forth herein.

2. From at least June 2013 through at least December 2016, in the County of Moore, in the Middle District of North Carolina, and elsewhere, JAMES EDWIN RICE and SUSAN EILEEN RICE willfully attempted to evade and defeat the payment of employment taxes due and owing by Sandhills Orthopaedic, to the United States of America, for the employment tax quarters

ending March 31, 2007, through the quarter ending December 31, 2011, and from the quarter ending September 30, 2012, through December 31, 2014, by committing the following affirmative acts, among others:

- a. From at least January 2013 through at least December 2016, JAMES EDWIN RICE and SUSAN EILEEN RICE transferred, and caused to be transferred, at least \$580,000 in funds from Sandhills Orthopaedic's bank accounts into the bank accounts of unrelated business entities that they also controlled.
- b. From at least January 2013 through at least December 2016, JAMES EDWIN RICE and SUSAN EILEEN RICE transferred, and caused to be transferred, at least \$990,000 in funds from Sandhills Orthopaedic's bank accounts into their personal bank accounts.
- c. From in or about June 2013 through in or about December 2016, JAMES EDWIN RICE deposited, and caused to be deposited, into his personal bank account at First Bank (x0011) checks for copayments from patients of Sandhills Orthopaedic totaling approximately \$320,000.
- d. From in or about June 2013 through in or about December 2016, SUSAN EILEEN RICE deposited, and caused to be deposited, into her personal bank account at First Bank (x3450) cash copayments for copayments from patients of Sandhills Orthopaedic totaling approximately \$688,000.

e. On or about January 6, 2017, JAMES EDWIN RICE signed under the penalties of perjury and caused to be submitted to an IRS revenue officer a false and misleading Form 433-B.

All in violation of Title 26, United States Code, Section 7201.

**COUNTS THREE AND FOUR
(Failure to Pay Over Trust Fund Taxes)**

1. Paragraph 1 through 24 of the Introductory Allegations section of this Indictment are hereby incorporated by reference as if fully set forth herein.

2. On or about the dates listed below, in the County of Moore, in the Middle District of North Carolina, and elsewhere, JAMES EDWIN RICE and SUSAN EILEEN RICE did willfully fail to truthfully account for and pay over to the IRS all of the trust fund taxes due and owing to the United States of America on behalf of Sandhills Orthopaedic and its employees, for each of the following quarters, with each calendar quarter constituting a separate count of this Indictment:

Count	Quarter (Ending Date)	Trust Fund Tax Due Date
Three	September 30, 2014	October 31, 2014
Four	December 31, 2014	January 31, 2015

All in violation of Title 26, United States Code, Section 7202.

**COUNTS FIVE THROUGH SEVEN
(Failure to File Individual Income Tax Returns)**

1. Paragraph 1 through 24 of the Introductory Allegations section of this Indictment are hereby incorporated by reference as if fully set forth herein.
2. During the following calendar years, JAMES EDWIN RICE and SUSAN EILEEN RICE, residents of Moore County, North Carolina, had and received gross income totaling the approximate amounts listed below. By reason of that gross income, they were required by law, following the close of the following calendar years and on or before the following dates, to make income tax returns to any proper officer of the IRS stating specifically the items of their gross income and any deductions and credits to which they were entitled. Well knowing and believing all the foregoing, they did willfully fail, on or about the following dates, in the Middle District of North Carolina and elsewhere, to make income tax returns:

Count	Calendar Year	Income Tax Return Due Date	Income Threshold for Married Filing Joint Returns
Five	2014	April 15, 2015	\$20,300
Six	2015	April 18, 2016	\$20,600
Seven	2016	April 18, 2017	\$20,700

All in violation of Title 26, United States Code, Section 7203.

**COUNTS EIGHT THROUGH TEN
(Failure to File Corporate Tax Returns)**

1. Paragraph 1 through 24 of the Introductory Allegations section of this Indictment are hereby incorporated by reference as if fully set forth herein.
2. During the following calendar years, JAMES EDWIN RICE was the president of Financial Solutions Management, Inc., a corporation not expressly exempt from tax, with its principal place of business in Moore County, North Carolina. He therefore was required by law, after the close of the following calendar years and on or before due dates listed below, to make income tax returns, for and on behalf of the corporation, to any proper officer of the IRS stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he did willfully fail, on or about the due dates listed below, in the Middle District of North Carolina and elsewhere, to make income tax returns at the time required by law:

Count	Calendar Year	Corporate Income Tax Return Due Date
Eight	2014	March 16, 2015
Nine	2015	March 15, 2016
Ten	2016	April 17, 2017

All in violation of Title 26, United States Code, Section 7203.

DATED: October 26, 2020

MATTHEW G. T. MARTIN
United States Attorney

BY: ALEXANDER R. EFFENDI
Trial Attorney for the Tax Division
U.S. Department of Justice

BY: MICHAEL L. JONES
Trial Attorney for the Tax Division
U.S. Department of Justice

A TRUE BILL:

FOREPERSON